

Senate Bill No. 457

Passed the Senate September 7, 2011

Secretary of the Senate

Passed the Assembly September 1, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4903.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, Calderon. Workers' compensation: liens.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law authorizes a medical provider to file a lien claim with the Workers' Compensation Appeals Board for certain expenses incurred by the provider. Under existing law, the board is required to allow a lien to the extent of benefits paid or services provided for reimbursement for self-procured medical costs for the effects of an injury or illness arising out of and in the course of employment.

Existing law requires the administrative director, after public hearings, to adopt and revise periodically an official medical fee schedule that establishes reasonable maximum fees paid for medical services, other than prescribed goods and services, in accordance with specified requirements.

This bill would require the board to determine, on the basis of liens filed, reimbursement for benefits paid or services provided by a self-insured employee welfare benefit plan notwithstanding the official medical fee schedule when an award is made for reimbursement for self-procured medical costs for the effects of an injury or illness arising out of and in the course of employment. This bill would also state that its provisions do not modify in any way specified rights or obligations.

The people of the State of California do enact as follows:

SECTION 1. Section 4903.1 of the Labor Code is amended to read:

4903.1. (a) The appeals board, arbitrator, or settlement conference referee, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed

with it pursuant to subdivision (b) or (c), whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss of income policy, a self-insured employee welfare benefit plan, or a hospital service contract, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows:

(1) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employee's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(2) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract. For purposes of this paragraph, benefits paid or services provided by a self-insured employee welfare benefit plan shall be determined notwithstanding the official medical fee schedule adopted pursuant to Section 5307.1.

(3) When the referee issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss of time benefits. Such lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. No lien shall be allowed hereunder unless the group disability policy provides for reduction, exclusion, or coordination of loss of time benefits on account of workers' compensation benefits.

(4) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(b) When a compromise of claim or an award is submitted to the appeals board, arbitrator, or settlement conference referee for approval, the parties shall file with the appeals board, arbitrator, or settlement conference referee any liens served on the parties.

(c) Any lien claimant under Section 4903 or this section shall file its lien with the appeals board in writing upon a form approved by the appeals board. The lien shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service upon the injured worker, or if deceased, upon the worker's dependents, the employer, the insurer, and the respective attorneys or other agents of record.

(d) The appeals board shall file liens required by subdivision (c) immediately upon receipt. Numbers shall be assigned pursuant to subdivision (c) of Section 5500.

(e) The changes made to this section by Senate Bill 457 of the 2011–12 Regular Session do not modify in any way the rights or obligations of the following:

(1) Any health care provider to file and prosecute a lien pursuant to subdivision (b) of Section 4903.

(2) A payor to conduct utilization review pursuant to Section 4610.

(3) Any party in complying with the requirements under Section 4903.

Approved _____, 2011

Governor